

## Department of Agriculture

## § 422.1

- 422.8 Communication of research misconduct policies and procedures.
- 422.9 Documents required.
- 422.10 Reporting to USDA.
- 422.11 Research records and evidence.
- 422.12 Remedies for noncompliance.
- 422.13 Appeals.
- 422.14 Relationship to other requirements.

AUTHORITY: 5 U.S.C. 301; Office of Science and Technology Policy (65 FR 76260); USDA Secretary's Memorandum (SM) 2400-007; and USDA OIG, 7 CFR 2610.1(c)(4)(ix).

SOURCE: 79 FR 75992, Dec. 19, 2014, unless otherwise noted.

### PART 422—RESEARCH INSTITUTIONS CONDUCTING USDA FUNDED EXTRAMURAL RESEARCH; RESEARCH MISCONDUCT

#### § 422.1 Definitions.

The following definitions apply to this part:

*Adjudication.* The stage in response to an allegation of research misconduct when the outcome of the investigation is reviewed, and appropriate corrective actions, if any, are determined. Corrective actions generally will be administrative in nature, such as termination of an award, debarment, award restrictions, recovery of funds, or correction of the research record. However, if there is an indication of violation of civil or criminal statutes, civil or criminal sanctions may be pursued.

*Agency Research Integrity Officer (ARIO).* The individual appointed by a USDA agency that conducts research and who is responsible for:

- (1) Receiving and processing allegations of research misconduct as assigned by the USDA RIO;
- (2) Informing OIG and the USDA RIO and the research institution associated with the alleged research misconduct, of allegations of research misconduct in the event it is reported to the USDA agency;
- (3) Ensuring that any records, documents and other materials relating to a research misconduct allegation are provided to OIG when requested;
- (4) Coordinating actions taken to address allegations of research misconduct with respect to extramural research with the research institution(s) at which time the research misconduct

is alleged to have occurred, and with the USDA RIO;

(5) Overseeing proceedings to address allegations of extramurally funded research misconduct at intramural research institutions and research institutions where extramural research occurs;

(6) Ensuring that agency action to address allegations of research misconduct at USDA agencies performing extramurally funded research is performed at an organizational level that allows an independent, unbiased, and equitable process;

(7) Immediately notifying OIG, the USDA RIO, and the applicable research institution if:

- (i) Public health or safety is at risk;
- (ii) USDA's resources, reputation, or other interests need protecting;
- (iii) Research activities should be suspended;
- (iv) Federal action may be needed to protect the interest of a subject of the investigation or of others potentially affected;
- (v) A premature public disclosure of the inquiry into or investigation of the allegation may compromise the process;

(vi) The scientific community or the public should be informed; or

(vii) Behavior that is or may be criminal in nature is discovered at any point during the inquiry, investigation, or adjudication phases of the research misconduct proceedings;

(8) Documenting the dismissal of the allegation, and ensuring that the name of the accused individual and/or institution is cleared if an allegation of research misconduct is dismissed at any point during the inquiry or investigation phase of the proceedings;

(9) Other duties relating to research misconduct proceedings as assigned.

*Allegation.* A disclosure of possible research misconduct through any means of communication. The disclosure may be by written or oral statement, or by other means of communication to an institutional or USDA official.

*Applied research.* Systematic study to gain knowledge or understanding necessary to determine the means by which a recognized and specific need may be met.

*Assistant Inspector General for Investigations.* The individual in OIG who is responsible for OIG's domestic and foreign investigative operations through a headquarters office and the six regional offices.

*Basic research.* Systematic study directed toward fuller knowledge or understanding of the fundamental aspects of phenomena and of observable facts without specific applications towards processes or products in mind.

*Extramural research.* Research conducted by any research institution other than the Federal agency to which the funds supporting the research were appropriated. Research institutions conducting extramural research may include Federal research facilities.

*Fabrication.* Making up data or results and recording or reporting them.

*Falsification.* Manipulating research materials, equipment, or processes, or changing or omitting data or results such that the research is not accurately represented in the research record.

*Finding of research misconduct.* The conclusion, proven by a preponderance of the evidence, that research misconduct occurred, that such research misconduct represented a significant departure from accepted practices of the relevant research community, and that such research misconduct was committed intentionally, knowingly, or recklessly.

*Inquiry.* The stage in the response to an allegation of research misconduct when an assessment is made to determine whether the allegation has substance and whether an investigation is warranted.

*Intramural research.* Research conducted by a Federal Agency, to which funds were appropriated for the purpose of conducting research.

*Investigation.* The stage in the response to an allegation of research misconduct when the factual record is formally developed and examined to determine whether to dismiss the case, recommend a finding of research misconduct, and/or take other appropriate remedies.

*Office of Inspector General (OIG).* The Office of Inspector General of the United States Department of Agriculture.

*Office of Science and Technology Policy (OSTP).* The Office of Science and Technology Policy of the Executive Office of the President.

*Plagiarism.* The appropriation of another person's ideas, processes, results, or words without giving appropriate credit.

*Preponderance of the evidence.* Proof by information that, compared with that opposing it, leads to the conclusion that the fact at issue is more probably true than not.

*Research.* All basic, applied, and demonstration research in all fields of science, engineering, and mathematics. This includes, but is not limited to, research in economics, education, linguistics, medicine, psychology, social sciences, statistics, and research involving human subjects or animals regardless of the funding mechanism used to support it.

*Research institution.* All organizations using Federal funds for research, including, for example, colleges and universities, Federally funded research and development centers, national user facilities, industrial laboratories, or other research institutes.

*Research misconduct.* Fabrication, falsification, or plagiarism in proposing, performing, or reviewing research, or in reporting research results. Research misconduct does not include honest error or differences of opinion.

*Research record.* The record of data or results that embody the facts resulting from scientific inquiry, and includes, but is not limited to, research proposals, research records (including data, notes, journals, laboratory records (both physical and electronic)), progress reports, abstracts, theses, oral presentations, internal reports, and journal articles.

*USDA.* United States Department of Agriculture.

*USDA Research Integrity Officer (USDA RIO).* The individual designated by the Office of the Under Secretary for Research, Education, and Economics (REE) who is responsible for:

- (1) Overseeing USDA agency responses to allegations of research misconduct;
- (2) Ensuring that agency research misconduct procedures are consistent with this part;

## Department of Agriculture

## § 422.4

(3) Receiving and assigning allegations of research misconduct reported by the public;

(4) Developing Memoranda of Understanding with agencies that elect not to develop their own research misconduct procedures;

(5) Monitoring the progress of all research misconduct cases; and

(6) Serving as liaison with OIG to receive allegations of research misconduct when they are received via the OIG Hotline.

### § 422.2 Procedures.

Research institutions that conduct extramural research funded by USDA must foster an atmosphere conducive to research integrity. They must develop or have procedures in place to respond to allegations of research misconduct that ensure:

(a) Appropriate separations of responsibility for inquiry, investigation, and adjudication;

(b) Objectivity;

(c) Due process;

(d) Whistleblower protection;

(e) Confidentiality. To the extent possible and consistent with a fair and thorough investigation and as allowed by law, knowledge about the identity of subjects and informants is limited to those who need to know; and

(f) Timely resolution.

### § 422.3 Inquiry, investigation, and adjudication.

A research institution that conducts extramural research funded by USDA bears primary responsibility for prevention and detection of research misconduct and for the inquiry, investigation, and adjudication of research misconduct allegations reported directly to it. The research institution must perform an inquiry in response to an allegation, and must follow the inquiry with an investigation if the inquiry determines that the allegation or apparent instance of research misconduct has substance. The responsibilities for adjudication must be separate from those for inquiry and investigation. In most instances, USDA will rely on a research institution conducting extramural research to promptly:

(a) Initiate an inquiry into any suspected or alleged research misconduct;

(b) Conduct a subsequent investigation, if warranted;

(c) Acquire, prepare, and maintain appropriate records of allegations of extramural research misconduct and all related inquiries, investigations, and findings; and

(d) Take action to ensure the following:

(1) The integrity of research;

(2) The rights and interests of the subject of the investigation and the public are protected;

(3) The observance of legal requirements or responsibilities including cooperation with criminal investigations; and

(4) Appropriate safeguards for subjects of allegations, as well as informants (see § 422.6). These safeguards should include timely written notification of subjects regarding substantive allegations made against them; a description of all such allegations; reasonable access to the data and other evidence supporting the allegations; and the opportunity to respond to allegations, the supporting evidence and the proposed findings of research misconduct, if any.

### § 422.4 USDA Panel to determine appropriateness of research misconduct policy.

Before USDA will rely on a research institution to conduct an inquiry, investigation, and adjudication of an allegation in accordance with this part, the research institution where the research misconduct is alleged must provide the ARIO its policies and procedures related to research misconduct at the institution. The research institution has the option of providing either a written copy of such policies and procedures or a Web site address where such policies and procedures can be accessed. The ARIO to whom the policies and procedures were made available shall convene a panel comprised of the USDA RIO and ARIOs from the Forest Service, the Agricultural Research Service, and the National Institute of Food and Agriculture. The Panel will review the research institution's policies and procedures for compliance with the OSTP Policy and